

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

DINO N. THEODORE )  
and ACCESS WITH SUCCESS, INC., )  
Plaintiffs ) CASE NO.: 1:13-cv-162  
)  
v. )  
)  
TMT SALEM PARK PLAZA, INC., )  
Defendant )

**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

The plaintiffs, Dino N. Theodore and Access with Success, Inc., respectfully move the Court pursuant to Fed. R. Civ. P. 15(a)(2) for leave to file an Amended Complaint. The proposed Amended Complaint deletes TMT Salem Park Plaza as the defendant and replaces that defendant with Linear Retail Salem #2, LLC.

Since filing the original Complaint on April 5, 2013, it has come to the attention of plaintiffs' counsel that TMT Salem Park Plaza, Inc. sold and conveyed the property at issue to Linear Retail Salem #2, LLC. The deed appears at Book 5399, Page 0876 of the Rockingham County Registry of Deeds. It was recorded on January 15, 2013. Therefore, Linear Retail Salem #2, LLC is the proper defendant in this enforcement action for injunctive relief pursuant to Title III of the Americans with Disabilities Act. *42 USC § 12188*.

This case was terminated due to counsel's inadvertent filing of a notice of voluntary dismissal. By even date herewith, the plaintiffs have filed a motion under Rule 60(b)(1) requesting relief from that error. No responsive pleading had been served prior to the entry of dismissal. Under Fed. R. Civ. P. 15(a) a party may amend the pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a)(2) provides, "In all other cases, a party may amend its pleading only with the opposing party's written consent or

the court's leave. The court should freely give leave when justice so requires." No opposing party has appeared yet. The Court, in its discretion, should grant leave to amend the complaint. The Amended Complaint is filed herewith as the sole Exhibit.

Pursuant to Local Rule 7.1 a. 2, the plaintiffs respectfully state that no separate memorandum of authorities is necessary to explain the grounds or reasons for this motion.

WHEREFORE the plaintiffs pray that their motion will be granted.

Respectfully submitted,  
The Plaintiffs, DINO THEODORE, et al.,

By their Attorneys,

/s/Nicholas S. Guerrera

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